

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

EXAMINATION – DECEMBER 2020

LAW 438.002
Secured Transactions

Professor Anne Uteck

EXAM PASSWORD: V85Pdm
RESUME CODE: ABB363

TOTAL MARKS: 100

(8:50 AM PST) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 150 MINUTES (2.5 HOURS)**

8:50-9:00 AM Preparation Time (Exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

9:00 AM Exam Writing Time – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

This is an **open book** examination, meaning that you can refer to all materials used in this course, including:

- The B.C. *Personal Property Security Act*
- assigned cases on the course syllabus;
- Course materials on LAW438.002 canvas; and
- Your own notes

You **may not** refer to the following materials:

- Materials from other secured transactions sections or previous iterations of this course;
- Materials from other courses;
- Textbooks and other texts not assigned or discussed in this course;
- Dictionaries; and,
- Any other materials available to you that have not been used in this course

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question. Do not email your professor or anyone else about this while the exam is in progress.

ACADEMIC INTEGRITY

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

CONFIDENTIALITY REGULATIONS – READ CAREFULLY

As this exam is being written off-campus and is unsupervised, any communication whatsoever (including, but not limited to in person, telephone, e-mail, text, social media, etc.) concerning the contents of this examination with anyone (other than the Student Services staff of the Allard School of Law) is strictly prohibited.

In the event any information comes to your attention regarding a breach of these regulations (by others, or inadvertently by you), please immediately contact Student Academic Services (studentservices@allard.ubc.ca) and make full disclosure.

A breach of these regulations may constitute student misconduct, and you may be subject to penalty or discipline under UBC's Academic Misconduct policies.

What Do I Do If:

- **I cannot access the exam questions on Canvas**

If you experience technical difficulties accessing the exam questions on Canvas, email studentservices@allard.ubc.ca and the exam questions will be emailed to you. Please provide your phone number when emailing Student Services.

- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

When you have finished writing the exam, you must upload the exam answers that you completed in Exemplify (if you are prompted for a Resume Code, it is on the coversheet of the exam questions). Email Bernie Flinn, flinn@allard.ubc.ca, for help with this. Please provide your phone number in the email. Bernie or another IT Support staff person will then help you to upload any answers that you typed in Exemplify.

You must also upload to Canvas your hand-written exam answers into the “Exam Answer File Upload (Word Processor or Hand-written ONLY)” folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:
Your Exam Code, Course Number, Name of Course, and Instructor Name
i.e., **9999 LAW 100.001 Law of Exam Taking - Galileo**

- **I’m experiencing technical difficulties EXITING and UPLOADING the exam**

If you experience any difficulty exiting and uploading your Exemplify exam answers, you must wait until the allocated time period specified on the coversheet of the exam has ended, then email Bernie Flinn, flinn@allard.ubc.ca, and he or another IT Support staff person will help you to upload your Exemplify exam file. Please provide your phone number in the email.

If you have approved accommodations to type your answers using Word Processing Software, and experience difficulties uploading your exam answer file to Canvas, email your exam answer file to studentservices@ubc.ca.

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I’m unable to continue writing my exam**

Please stop writing, note the time that you stopped, and email studentservices@allard.ubc.ca immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

END OF COVER PAGES

Question #1 (80 marks total)**(Recommended time: 90 minutes)**

Carleton SmartHome Appliances Inc. ("Carleton") is a company that operates a mid-size appliance retail store in Burnaby, British Columbia. The store is located on the east-side of Burnaby near Highway #1 in a building owned by Carleton, which has, since 2009, been the subject of a mortgage in favour of National Bank.

Carleton has capitalized on the technology wave in home convenience, now specializing in appliances with built-in computing systems. The appliances have a hefty price tag, but are becoming increasingly popular with consumers. Carleton has decided to expand its business in response to the higher demand for its products. On March 6, 2013, Carleton applied to Vancity Credit Union for a general operating loan to finance the expansion of its appliance business. Carleton agrees to give Vancity a security interest in all of Carleton's current and after-acquired personal property. Vancity files a financing statement on March 6, 2013 in accordance with the provisions of the B.C. *PPSA*. Carleton's personal property included ten high-end computers used for kitchen design and payment by customers, a large stock of appliances, two half-ton trucks, equipment and furniture used in the model 'dream kitchen' on display to showcase the smart appliances, a specialized cooling ventilator for the newly renovated computer room and 20 Apple iPads for its employees. The employees used the ipads when consulting with customers in the store, but were permitted to take the ipads home and sometimes used for personal use. The collateral description in the financing statement for the two half-ton trucks did not include their serial numbers. The security agreement was not signed by Carleton until 12 days later at which time the loan was fixed at \$850,000.

On March 8, 2013, Carleton purchased high-end granite counter tops from Vesta Marble & Granite Shop (Vesta) for its model dream kitchen. Carleton paid for the counter tops in full with cash that had been generated from retail sales made in the ordinary course of business. The counter tops were delivered to the Carleton store the same day, but they were not actually attached to the cabinets and wall of its store until April 8, 2013. However, after the counter tops were installed, Carleton realized it was likely going to run short of cash. Carleton approached Vesta on April 15 and asked for a loan of \$2000 to be secured by the counter tops Carleton had purchased. Vesta agreed and loaned the money to Carleton that afternoon after the security agreement was signed. On April 16, 2013, Vesta registered a financing statement in the British Columbia Personal Property Registry and registered a notice of the security interest in the British Columbia Land Titles Registry but took no further action.

On March 9, 2013, in need of cash quickly, Carleton obtained a loan for \$75,000 from Westcoast Bank in exchange for a general security interest in all of Carleton's present business assets. Westcoast Bank filed a financing statement the next day. At or about the same time, Vancity, Westcoast and Carleton enter into a Subordination Agreement under which Vancity agrees not to assert a claim against Carleton's collateral until Westcoast's claim is satisfied. On

March 11, 2013 Westcoast Bank realized it had made an error when it registered the security interest by describing the collateral as inventory. That same day filed a new financing statement with the correct classification and description under the debtor business name Carlton Appliances Inc.

In August 2013, Carleton ordered a shipment of refrigerators from a new supplier, Kenmore. Since Carleton could not pay cash for the refrigerators, it agreed to grant Kenmore a security interest in the refrigerators under a Conditional Sales Agreement. Kenmore gave notice to all parties who had a registered security interest in the same items and kinds of collateral together with its intention to supply Carleton with refrigerators upon secured credit. Kenmore filed a financing statement in accordance with the provisions of the *PPSA* shortly before shipping the refrigerators to Carleton.

Despite the brisk sales over 2013, Carleton was having financial difficulty meeting its very high operating expenses. In December of 2013, Office Supplies Depot was awarded a judgment against Carleton for the sum of \$10,000. Office Supplies Depot seized five of Carleton's high-end computers on February 1, 2014, but did not register the judgment in the Personal Property Registry until 6 months later. Wanting to pay off this debt to recover the computers, the owners of Carleton, Susan and Trevor Brown, borrowed \$10,000 from their son-in-law, successful entrepreneur Robert Davies, and promised to repay the loan in quarterly installments plus interest. No loan agreement was signed. The Brown's and Robert further agreed that if the Brown's were unable to repay the loan as promised Robert could have their 1970 vintage mustang car worth roughly \$20,000. The mustang was stored in the Brown's garage, but Robert continued to use the car regularly. Instead of paying the Office Supplies Depot judgment debt, the Brown's used the money from Robert to purchase a new half-ton truck to replace the one that had been destroyed in an accident when one of its employees was making a delivery. In the fall of 2014, Carleton received a cheque from its insurance claim for the destroyed company truck.

Early in 2015, Carleton went into bankruptcy and a trustee was appointed. The creditors are now seeking to enforce their claims.

**(1) In what order should the claims to what property of Carleton's creditors, except Vesta Marble & Granite Shop be ranked. Explain fully.
(75 marks)**

**(2) In a priority dispute over the granite counter tops, please indicate which creditor should prevail, and why.
(5 marks)**

Question 2 (20 marks)**Recommended time: 30 minutes**

In March 2015, Can-Lab Suppliers loaned Ross Calvin, a leading independent scientist in exercise physiology, \$40,000 and took in return a security interest in two high-tech Cam X370 treadmills. These treadmills were used by Ross Calvin in his Vancouver-based Lab to measure electrical activity of the heart before, during and after exercising. A security agreement was signed correctly describing the collateral. The security agreement said nothing about the transfer of collateral. Can-Lab immediately assigned the agreement, for good consideration, to Commercial Finance Company, which promptly and correctly registered its interest in the British Columbia Personal Property Registry. In August 2015, to fund a new research project in exercise physiology in the aging population, Ross Calvin sold the CamX370 treadmills to Carlos Mela for use in his Lab located on the Island of Tenerife, Spain, for \$27,000 cash. The treadmills are successfully shipped to Carlos Mela in Tenerife. From this money Ross receives for the treadmills, he set up a bank account and deposits \$10,000 for the sole purpose of using these funds to pay his two research assistants. The remaining \$17,000 is used by Ross to purchase a Mona L77 performance testing stationary bicycle ergometer. Like the CAM treadmills, the Mona Bicycle is an exercise machine, commonly used by scientists, equipped with an apparatus for measuring the amount of work done by human muscles. The Mona L77 was purchased by Ross from Vancouver Exercise Equipment Sales & Leasing Company (VEE). All of VEE's inventory was subject to a registered perfected security interest held by the Royal Bank.

In September 2015, Ross Calvin defaults on his payments to Commercial Finance Company having paid only \$5000.

(1) What, if any, are the rights of Commercial Finance Company to the treadmills, the \$10,000 and the Mona Bicycle?

(2) What, if any, are the rights of the Royal Bank to the Mona Bicycle?

DO NOT DISCUSS ANY REMEDIAL ACTION UNDER PART V FOR EITHER QUESTION (1) OR QUESTION (2).

END OF EXAMINATION